



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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0035

April 29, 1992

CERTIFIED RETURN RECEIPT  
P 074 979 228

Mr. Glen Zumwalt  
Utah Fuel Company  
P.O. Box 719  
Helper, Utah 84526

Dear Mr. Zumwalt:

Re: Proposed Assessment for State Violation No. N92-37-3-1, Utah Fuel Company,  
Skyline Mine, ACT/007/005, Folder #5, Carbon County, Utah

The undersigned has been appointed by the Board of Oil, Gas and Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty assessment for the above-referenced violation. The violation was issued by Division Inspector, Priscilla Burton on March 25, 1992. Rule R645-401-600 et. sec. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent, within fifteen (15) days of receipt of the Notice of Violation, has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R645-401-700, there are two informal appeal options available to you:

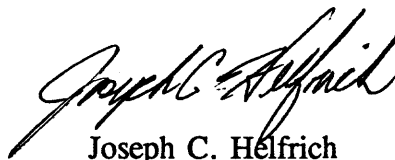
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within 30 days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within 30 days of receipt of this

Page 2  
N92-37-3-1  
ACT/007/005  
April 29, 1992

letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of violation will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vicki Bailey.**

Sincerely,



Joseph C. Helfrich  
Assessment Officer

jbe  
Enclosure  
cc: Bernie Freeman, OSM

**WORKSHEET FOR ASSESSMENT OF PENALTIES  
UTAH DIVISION OF OIL, GAS AND MINING**

COMPANY/MINE Utah Fuel Company/Skyline Mine

NOV #N92-37-3-1

PERMIT # ACT/007/005

VIOLATION 1 OF 1

ASSESSMENT DATE 04/28/92

ASSESSMENT OFFICER Joseph C. Helfrich

**I. HISTORY MAX 25 PTS**

- A. Are there previous violations which are not pending or vacated, which fall within 1 year of today's date?

ASSESSMENT DATE 04/28/92

EFFECTIVE ONE YEAR TO DATE 04/28/91

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 1 point for each past violation, up to one year;
- 5 points for each past violation in a CO, up to one year;
- No pending notices shall be counted.

**TOTAL HISTORY POINTS** 0

**II. SERIOUSNESS (either A or B)**

NOTE: For assignment of points in Parts II and III, the following applies. Based on the facts supplied by the inspector, the Assessment Officer will determine within which category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an Event (A) or Hindrance (B) violation? Event

**A. Event Violations Max 45 PTS**

1. What is the event which the violated standard was designed to prevent?  
Conducting activities without appropriate approvals, environmental harm, and water pollution.

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent? Occurred

... PROBABILITY	RANGE
... None	0
... Unlikely	1-9
... Likely	10-19
... Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS

See attached inspector's statement.

3. What is the extent of actual or potential damage?

RANGE 0 - 25\*

\*In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 25

PROVIDE AN EXPLANATION OF POINTS

See attached inspector's statement.

B. Hindrance Violations MAX 25 PTS

1. Is this a potential or actual hindrance to enforcement? \_\_\_\_\_

RANGE 0 - 25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS \_\_\_\_\_

PROVIDE AN EXPLANATION OF POINTS

TOTAL SERIOUSNESS POINTS (A or B) 45

**III. NEGLIGENCE MAX 30 PTS**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? **IF SO - NO NEGLIGENCE;**  
 OR Was this a failure of a permittee to prevent the occurrence of a violation due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? **IF SO - NEGLIGENCE;**  
 OR Was this violation the result of reckless, knowing, or intentional conduct? **IF SO - GREATER DEGREE OF FAULT THAN NEGLIGENCE.**

... No Negligence	0
... Negligence	1-15
... Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Greater degree of fault

ASSIGN NEGLIGENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS

See attached inspector's statement.

**IV. GOOD FAITH MAX 20 PTS. (EITHER A or B) (Does not apply to violations requiring no abatement measures.)**

- A. Did the operator have onsite the resources necessary to achieve compliance of the violated standard within the permit area?  
 ... **IF SO - EASY ABATEMENT**  
 Easy Abatement Situation  
 ... **Immediate Compliance -11 to -20\***  
 ... Immediately following the issuance of the NOV)  
 ... **Rapid Compliance -1 to -10\***  
 ... (Permittee used diligence to abate the violation)  
 ... **Normal Compliance 0**  
 (Operator complied within the abatement period required)  
 (Operator complied with conditions and/or terms of approved Mining and Reclamation Plan)

\* Assign in upper or lower half of range depending on abatement occurring in 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance OR does the situation require the submission of plans prior to physical activity to achieve compliance?

... IF SO - DIFFICULT ABATEMENT

Difficult Abatement Situation

- ... **Rapid Compliance** -11 to -20\*  
(Permittee used diligence to abate the violation)
- ... **Normal Compliance** -1 to -10\*  
(Operator complied within the abatement period required)
- ... **Extended Compliance** 0  
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard, or the plan submitted for abatement was incomplete)  
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? \_\_\_\_\_ ASSIGN GOOD FAITH POINTS -0

PROVIDE AN EXPLANATION OF POINTS

To be evaluated upon termination of the violation. \_\_\_\_\_

V. ASSESSMENT SUMMARY FOR N92-37-3-1

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>45</u>
III.	TOTAL NEGLIGENCE POINTS	<u>20</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-0</u>
	TOTAL ASSESSED POINTS	<u>65</u>
	TOTAL ASSESSED FINE	<u>\$ 1800.00</u>

jbe

COMPANY/MINE Utah Fuel Company/ Skyline Mine  
PERMIT # ACT/007/005

NOV/CO #92-37-3-1  
VIOLATION # 1 of 1

EVENT VIOLATIONS INSPECTORS STATEMENT

A. SERIOUSNESS

1. What harmful event was this regulation designed to prevent? Refer to the DOGM reference list of events below and remember that the event is not the same as the violation. Check and explain each event.
  - a. Activity outside the approved permit area.
  - b. Injury to the public (public safety).
  - c. Damage to property.
  - X d. Conducting activities without appropriate approvals.
  - X e. Environmental harm.
  - X f. Water pollution.
  - g. Loss of reclamation/revegetation potential.
  - h. Reduced establishment, diverse and effective vegetative cover.
  - i. Other.

*The continued discharge of high TDS water from the mine has degraded the quality of water in Eccles Creek. Three points to measure water quality are CS 4 and CS 3 on the upper left and middle forks of Eccles Creek above the mine and VC 6 on Eccles Creek below the mine, but above the confluence with South Fork. Over time these values have been tracked by Utah Fuel Co. and the average annual values are reported in the Table below. Eccles Creek is classified as a Class 1C, 3A, and 4 stream for culinary, fishery and agricultural uses, respectively. The increase in TDS may have several affects on the downstream uses. (Sulfates are half of the increased TDS values.) For fisheries, this creates a fluctuating osmotic condition which is difficult for the fish to adjust to. For agriculture it increases the salinity of soil irrigated by the high TDS water (over 4.0 mmhos) increases salinity and thereby reduces productivity. For culinary use, high TDS values place an added burden on water treatment facilities. Finally, the exceedence of the UPDES permit adds to the Colorado salinity problems.*

NOV/CO #92-37-3-1  
VIOLATION # 1 of 1

AVERAGE ANNUAL CONCENTRATIONS OF TDS, SO<sub>4</sub>, AND EC  
AT SELECTED POINTS UPSTREAM AND DOWNSTREAM OF THE SKYLINE MINE  
FOR THE YEARS 1981, 1985 AND 1990

	CS 4 Upper Left Fork Eccles Creek	CS 3 Upper Middle Fork of Eccles Creek	VC 6 Eccles Creek Above Confluence with South Fork
TDS mg/L			
1981	50	244	285
1985	183	247	244
1990	233	223	465
1991	236	243	910
Sulfate mg/L			
1981	27	16	21
1985	14	13	90
1990	7	10	322
1991	17	20	414
EC ummhos/cm			
1981	356	374	386
1985	365	423	513
1990	383	443	1013
1991	398	415	1224

2. Has the event occurred? Yes X No



NOV/CO #92-37-3-1  
VIOLATION # 1 of 1

If yes, describe it. If no, what would cause it to occur and what is the probability of occurrence of the event? (None, Unlikely, Likely, Occurred).

***The exceedence of the permitted limits for TDS have occurred. Skyline sent 12 letters of TDS exceedence in 1990 and 23 letters of TDS exceedence in 1991. The UPDES discharge limitation for TDS is 1000 mg/L daily limit and an annual average limitation of 723 mg/L. The annual average was exceeded in 1991. The estimated annual average discharge was over 1200 mg/L (see Administrative Order 192-03 Utah Water Quality Board 4/22/92).***

***The UPDES permitted discharge limit of 500 mg/L sulfates was exceeded 8 times in 1991. Values of up to 800 mg/L sulfates have been reported.***

***The sample which was collected on the day of inspection (2/26/92) from UPDES point 001 had a recorded TDS value of 1260 mg/L and 619 mg/L of sulfates. The accessible downstream point VC 6 had a recorded TDS value of 1180 mg/L and sulfates of 529 mg/L.***

3. Would and/or does damage extend off the disturbed and/or permit area?

DISTURBED AREA

PERMIT AREA

Would: Yes X No   

Would: Yes X No   

Does: Yes X No   

Does: Yes X No   

4. Describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not been discovered by a DOGM inspector? Describe this potential damage and whether or not damage would extend off the disturbed and/or permit area.

Potential damage off the disturbed area. Yes X No   

Potential damage off the permit area. Yes X No

NOV/CO #92-37-3-1  
VIOLATION # 1 of 1

***The exceedence of permit limits has been occurring over several years. The UPDES daily limit was raised on 9/1/90 from 700 mg/L to 1000 mg/L. This limit has been chronically exceeded for the years 1990, 1991, 1992. The damage is difficult to quantify. The potential effects are known, but studies of the fisheries and the productivity of the downstream cropland has not been undertaken.***

B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss.)

- ( ) Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.
- (X) If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

***Over the past two years the operator has attempted to dilute the source of the high TDS water with other mine water prior to discharge and to limit contact of the incoming ground water with the rock dust in the abandoned workings in Mine #3 which is the source of the TDS problem.***

- ( ) Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care, explain.
- (X) Was the operator in violation of a specific permit condition?

***Yes, UPDES permit #0023540 and R645-301-751.***

- (X) Did the operator receive prior warning of noncompliance by State or Federal inspectors concerning this violation?

***Yes, reference to exceedences of the UPDES discharge permit is written into inspection reports dated 1/22/91, 8/9/91, 8/29/91, and 9/25/91. Additionally, the Dept. of Environmental Quality has notified***

NOV/CO #92-37-3-1  
VIOLATION # 1 of 1

***Utah Fuel Co. of their concern over exceedences in memos and meetings on 5/1/91, 5/31/91, 1/17/92.***

- ( ) Has DOGM or OSM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

***No***

C. GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give dates) and describe the measures the operator took to comply as rapidly as possible.

***Utah Fuel Co brought plans to the Division on 4/24/92 (as required for abatement). The plan that is presented is to store the high discharge water in 1 North, an abandoned section of the mine. It is estimated that there is storage capacity for 88 days at the current discharge rate. Therefore, the plan is to wait another 88 days for the TDS levels to drop off. Utah Fuel is of the opinion that the TDS levels will level off if the water level is maintained constant. With a constant water level, the gypsum in contact with the water will become dissolved and eventually there will be no more dissolution. This theory was first presented to me in the Fall of 1990. The TDS values have not fallen from abandoned workings to date. I do not believe that Utah Fuel Co. is evaluating every possibility for reducing TDS levels. The possibilities that were discussed by Harry Campbell (Water Poll Control) during the 2/26/92 inspection were reverse osmosis and distillation or deionization. The potential for the use of these technologies was not discussed in the abatement response to the N.O.V. I do not think the Utah Fuel Company is acting in good faith to try to achieve compliance.***

Page 6  
Inspector Statement  
Event Violations

NOV/CO #92-37-3-1  
VIOLATION # 1 of 1


2. Explain whether or not the operator had the necessary resources onsite to achieve compliance.

***Compliance will require treatment of the water using expensive technology such as reverse osmosis or distillation or deionization. Alternatively, the operator could consider deep well injection of the water. These methods will all require considerable research, review and expense.***

3. Was the submission of plans prior to physical activity required by this NOV/CO? Yes X No     If yes, explain.

***The abatement required the submission of plans to reduce TDS and sulfate levels within 30 days (4/25/92) and the enactment of those plans 30 days after approval by the Division and DEQ-H2O Pollution Control.***

4/24/92  
DATE



AUTHORIZED REPRESENTATIVE

Priscilla Burton